

E-FILED on 8/1/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,
PETER BESSELINK, MEMORY METALS
HOLLAND, B.V.,

Defendants.

No. C-04-03843 RMW

ORDER TAKING MEMRY'S MOTION TO
DISMISS AND KOT'S MOTION FOR
SANCTIONS UNDER SUBMISSION
WITHOUT ORAL ARGUMENT

[Re Docket Nos. 635, 649]

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and
SCHLUMBERGER TECHNOLOGY
CORPORATION,

Counterdefendants.


Scheduled for hearing on August 3, 2007 before the court are two related motions: the first is a motion by Memry Corporation ("Memry") challenging Kentucky Oil's ("KOT's") standing to assert its counterclaims against Memry; the second is a motion by KOT for sanctions, asserting that

ORDER TAKING MEMRY'S MOTION TO DISMISS AND KOT'S MOTION FOR SANCTIONS UNDER SUBMISSION WITHOUT ORAL ARGUMENT—No. C-04-03843 RMW
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1 Memry is in violation of the court's scheduling orders and its order dated March 23, 2007, which
2 expressly set forth that "No further dispositive motions shall be filed." The motion to dismiss
3 concerns whether KOT, as the successor-in-interest to United Stenting, Inc. (a foreign corporation
4 that allegedly was restricted from transacting intrastate business in California because it did not first
5 obtain a certificate of qualification), is barred from maintaining this civil action. Central to the
6 motion for sanctions is the parties' dispute over whether Memry's motion to dismiss is a disguised
7 motion for summary judgment brought without seeking the court's leave.

8 Having reviewed the parties' papers, the court does not believe that oral argument is
9 necessary. Accordingly, the matter shall be deemed submitted on the papers. *See* Civil L.R. 7-1(b).
10 Should the court later decide that it would benefit from oral argument, the parties will be notified.

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13 DATED: 8/1/07



RONALD M. WHYTE
United States District Judge

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16 Counsel are responsible for distributing copies of this document to co-counsel that have not
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Dated: 8/1/07

/s/ MAG
Chambers of Judge Whyte